

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK, U.S. DISTRICT COURT

By

Deputy

NOV -- 6 2001

BERNICE E. RAINS and  
ANITA HYCHE RAINS,

Plaintiffs,

vs.

JANI-KING OF NASHVILLE, INC.,

Defendant.

Civil No. 3:01-CV-1778-H

**PLAINTIFFS' REPLY TO DEFENDANT'S COUNTERCLAIM**

Pursuant to Fed. R. Civ. P. 12(a)(2), Plaintiffs, Bernice E. Rains and Anita Hyche Rains (collectively "Rains") reply herein to the Counterclaim filed by Defendant, Jani-King of Nashville, Inc. ("JKN").

46.<sup>1</sup> Admit that JKN purports to state a claim under the subject franchise agreement, but deny that JKN states a valid claim. Deny the remainder of paragraph 46.

47. Admit.

48. Admit.

49. Admit that there is complete diversity and that the amount sought in the Complaint exceeds the minimum jurisdictional limits of the Court.

*Plaintiffs' Reply to Defendant's Counterclaim – Page 1*

50. Admit that the Court has supplemental jurisdiction, but deny that JKN asserts a valid claim.

51. Admit that there exists a franchise agreement between the parties and refer to that document for its terms.

52. Admit that JKN misquotes paragraph 4.5.1 of the franchise agreement.

53. Admit that JKN accurately quotes paragraph 4.19.2 of the franchise agreement.

54. Admit that the franchise agreement includes noncompetition provisions and deny that such provisions are enforceable.

55. Deny.

56. Deny.

57. Incorporate by reference the answers set forth above.

58. Deny.

59. Incorporate by reference the answers set forth above.

60. Deny.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

JKN breached the franchise agreement prior to any alleged breach by Rains and therefore suspended performance under the agreement.

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<sup>1</sup> Corresponds to paragraph numbers in Defendant Jani-King of Nashville, Inc.'s Original Answer and Counterclaim.

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## **SECOND AFFIRMATIVE DEFENSE**

JKN is estopped from asserting any claims against Rains because of its failure to respond to Rains' continued efforts to communicate with JKN about their customers and contracts.

## **THIRD AFFIRMATIVE DEFENSE**

JKN, through its actions, waived its right to assert any claims against Rains by failing to provide notice of any alleged default, receiving notice of cleaning contracts, failing to respond to repeated inquiries by Rains, failing to provide accounting services on a timely and professional basis and accepting payments from Rains.

## **FOURTH AFFIRMATIVE DEFENSE**

JKN is barred by the doctrine of laches from asserting any claims against Rains relating to contracts or services previously performed.

## **FIFTH AFFIRMATIVE DEFENSE**

JKN failed to perform all conditions precedent, and consequently, its claims against Rains must fail.

## **SIXTH AFFIRMATIVE DEFENSE**

JKN's claims for relief are barred by the doctrine of unclean hands.

## **SEVENTH AFFIRMATIVE DEFENSE**

JKN's claims for relief are barred because they acquiesced, acknowledged, ratified, and or consented to the alleged acts, omissions, or conduct, if any, of Rains.

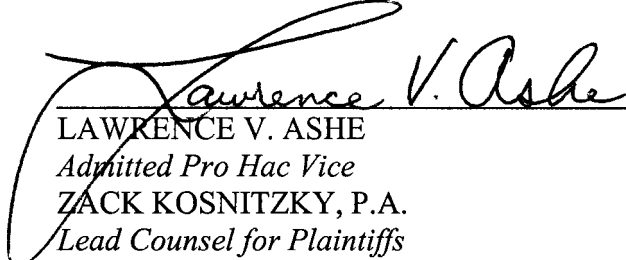
WHEREFORE, Plaintiff Rains hereby demands (1) judgment in their favor and against JKN on its Counterclaim, (2) attorneys' fees based on the franchise agreement,

expenses, and costs incurred in defending this Counterclaim, and (3) such other relief as the court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Rains respectfully requests a trial by jury of all issues in the Counterclaim and Answer triable as of right to a jury.

Respectfully submitted,

  
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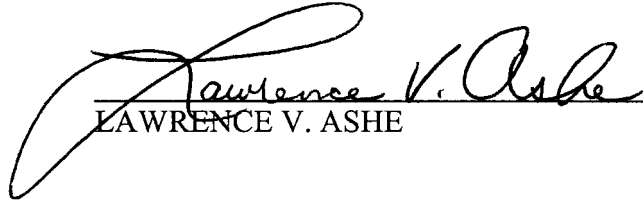
DAENA GOLDSMITH RAMSEY  
State Bar No. 08093970

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ATTORNEYS FOR PLAINTIFFS BERNICE E. RAINS  
AND ANITA HYCHE-RAINS

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Plaintiffs' Reply to Defendant's Counterclaim was furnished by facsimile and U.S. mail this 5<sup>th</sup> day of November, 2001, to DAVID G. CABRALES, ESQ., and JASON S. LEWIS, ESQ., Locke Liddell & Sapp, LLP, Attorneys for Defendants, 2200 Ross Avenue, Suite 2200, Dallas, TX 75201-6776.

  
LAWRENCE V. ASHE